THREE Seasonable Considerations UPON HIS MAJESTY's GRACIOUS Letters Patents Lately Granted to the GOLDSMITHS, Their Heirs and Assigns, for Security and Satisfaction of their Debt.

By a Friend to Debtor and Creditor, who hath taken the same advice he now gives.

London, Printed for *W. B.* 1678.

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Hollander 253

Three Seaſonable Conſiderations upon his Majeſty's Gracious Letters Patents, lately granted to the Goldſmiths, their Heirs and Aſſigns, for Security and Satisfaction of their Debt.

THree things are conſiderable in the Kings Letters Patents lately granted to the Goldſmiths and their Creditors for payment and ſatisfaction of their Debt.

Firſt the Validity in Law, and Firmneſs of the ſaid Letters Patents, and Debt to the Goldſmiths and their Aſſigns for ever.

Secondly, The Power and Authority ſtill remaining in the Goldſmiths to make Legal and Valid Aſſignments to their Creditors, though the year limited in the ſaid Letters Patents for Aſſignments, be fully expired.

Thirdly, The Adviſeableneſs for the Creditors to proceed to take farther Aſſignments from the Goldſmiths, though the year mentioned in the ſaid Letters Patents, be expired.

Firſt, The ſaid Letters Patents and Debt are valid and firm in Law, as well againſt his Majeſty's Heirs and Succeſſours, as againſt his Majeſty himſelf.

1. Becauſe they are confirmed and ſecured under the Great Seal of *England*, which is an Eſtabliſhment in Law of the higheſt Grandeur and Puiſſance: The Law ſtiles the Great Seal, the Key of the Kingdom. It is the great Organ by which the Soveraign power doth move, and by which the Kings of *England* are concluded, and bound. By this Tenure the whole Magiſtracy in Church and State enjoy their great Offices, and the vaſt emoluments thereof. All the Corporations and Companies of *England*, their Franchiſes and Immunities, though granted to them many Ages ago. By this Security alone the innumerable Purchaſes, and Gifts from the Crown, as well ancient as modern, are held to this day without Interruption. And laſtly Malefactors who had by their Crimes forfeited their Heads to the King, and yet have obtained his gracious pardon, enjoy their very Lives by this ſole Aſſurance. And the ſaid Security which the King hath given to the Goldſmiths and their Aſſignes for this Debt, is of the very ſame Vigour and ſtrength with theſe.

2. The King hath made this ſettlement, upon a valuable and immenſe conſideration of Money, really and *bona fide* paid and received by his Majeſty from the Subject; which Receipt of Money the King doth expreſly acknowledge, and affirm in the ſaid Letters Patents, and therefore the King hath had an adequate and proportionable compenſation for this ſettlement, and ſo cannot be deceived, or deluded in his Grant.

3. The ſaid Letters Patents are made for the ſatisfaction of Moneys, lent by the Subject to the King, upon the Credit and Invitation of a certain Statute Law made in the Nineteenth year of his Majeſty's Reign that now is [Entituled, An Act for Aſſigning Orders in the Exchequer without Revocation] wherein it is Enacted, *That every perſon to whom any Moneys ſhall be due in his Majeſty's Exchequer, and that hath there any Order Regiſtred for the payment thereof, out of any Branch of his Majeſty's Revenue, may aſſign his Right and Intereſt in ſuch Order, and thereupon his Aſſignee ſhall be entituled to the Benefit of ſuch Order, and Payment thereon.* And the Goldſmiths and their Creditors are within all the Qualifications required in

the ſame Statute. And ſo the ſaid ſettlement is purſuant to an Act of Parliament, and in maintenance of a common Faith, and Warranty given by the whole Nation for the Satisfaction of this Debt, and therefore Valid in Law.

4. The ſaid Letters Patents are made for ſatisfaction of Moneys lent to the King by the Subject, upon the Security of Talleys ſtruck in the Exchequer, which is a good Security in that Caſe to the Subject by the Common Law. And ſo the ſaid ſettlement is in Affirmance of the Common Law of *England*.

5. This Debt is founded upon that part of the Exciſe which is granted by Parliament to the King, his Heirs and Succeſſours. And therefore, as this Caſe is, the King may legally charge this Hereditary part of his Revenue in perpetuity, for the payment of this Debt.

6. By the expreſs Limitation of the ſaid Letters Patents, the yearly Rent granted to the Goldſmiths and their Aſſigns, is to be paid to them without farther Warrant, to be ſued for from the King, his Heirs and Succeſſours, and without any Account, Impreſt, or other charge. And moreover the quarterly payments thereof, are to be preferred before any other payments of a later Date. And immediately after ſuch payments and charges as are neceſſary for the management of the Revenue of the ſaid Hereditary Exciſe, and the yearly ſumms thereupon chargeable to the Queen and the Duke, which amounts to 36000 l. the overplus being valued at Two hundred thouſand pounds yearly at leaſt. So that there can be no reaſonable Apprehenſion, but that the Fund will be ſufficient to ſatisfie this charge, the Revenue being more than double to the charge.

7. The King hath expreſly covenanted for Himſelf, his Heirs and Succeſſours, That if at any time hereafter, any Defect or Queſtion ſhall be found or made concerning the Validity of the ſaid Letters Patents, that in ſuch caſe the King, his Heirs and Succeſſours, will make ſuch farther Grant, Aſſurance and Confirmation, as ſhall be deſired by the ſaid Goldſmiths, their Heirs and Aſſignes. By which proviſion this Nail is ſo ſurely clenched, that no poſſibility remains that it can at any time hereafter be ever wreſted, or forced out again.

To theſe Legal Reaſons ſhall be here ſubjoyned other Arguments touching the Validity of the ſaid Letters Patents, which though they are not drawn from the Fountains of Law, yet cannot be denyed or gainſaid by any man of common Senſe or Underſtanding. And are offered here only as collateral and concurrent proofs.

1. The ſaid Letters Patents are Printed and Publiſhed by his Majeſties own Gracious and Poſitive Commands, for the Satisfaction and Information of the Creditors, as is expreſſed upon the Title page of the ſaid Patent. And which is more, the ſaid Letters Patents were Printed and made publick by order of the King, in preſence of the Noble Lords and other the Worthies of the Council, as appears by the very ſaid Order it ſelf, Printed before the ſaid Letters Patents. And it is no way probable that a matter, to the conſummation of which ſo great deliberation and ſolemnity hath been uſed, will be eaſily violated.

2. His Sacred Majeſty hath frequently paſſed his Gracious and Royal Word (that ſo ſoon as ever the Lords and Commons ſhall preſent to him a Bill to that purpoſe) *He will by Act of Parliament confirm the ſaid Letters Patents, and All the Aſſignments already made by the Goldſmiths to their Creditors, or that they ſhall hereafter make to them, and to enable the ſaid Creditors to aſſign over to any other perſons, as often as they pleaſe.* And a Bill to that effect (with the countenance, and expreſs recommendation of His Gracious Majeſty) was accordingly brought into the Lords Houſe this very laſt Seſſion, by the Right Honourable, the Lord High Treaſurer, (who hath alwayes ſhewed his great favour to the thing,) and was there paſſed by the Illuſtrious and Noble Members of that Houſe, with a wonderful Unanimity and concurrence, not ſo much as one contradicting.

And Laſtly, The Duke of *York*, who was in truth concerned to have oppoſed the ſaid Security with all his Vigour and Puiſſance, becauſe the ſaid Debt was to be charg'd upon the

hereditary

hereditary part of the Excise, did vouchsafe notwithstanding to relinquish his own Interest and the Grandeur of his illustrious Person to that Degree, as to become even the very unwearied Sollicitor of the whole Affair. And as if so gracious a self-denyal had not been yet enough, He was farther pleased the last Session of Parliament with great zeal to recommend the passing thereof (so that no man can now doubt but that his Royal Highness will upon all Occasions be, and continue an immoveable Patron, and Advocate of this Debt.) An Action certainly of high Honour and Generosity, And that is, and will be in all future time, wrote upon the Heart of every good English man, with Characters never to be blotted out.

Obj. But now if after all this any man shall say, We do agree that a Great Seal is an high and sacred Security, And that this particular Great Seal to the Goldsmiths and their Creditours is founded (as hath been proved) upon undoubted, and impregnable Law and Reason: But what if a King of *England* should at any time violate his Grants and Legal Concessions therein made, can a Subject be able to contend, or bear up against his Prince in point of Law in a Case of this nature?

Answ. This Objection will receive a very clear Answer. For first the Law (which saith the King can do no wrong) will never presume that the King will violate his Legal Concessions under the Great Seal. Secondly, (if that should possibly happen by evil Advices, or otherwise, to be the case) the Law of *England* (which hath ever been a Bulwark, or Sea Wall between the Prerogative and the common Liberties) hath not left the Subject without a convenient and sure Remedy in this Case. And that is (not by bringing any Action against the King, for that the Law allows not, by reason of the Dignity of the Kings Royal person, but) by preferring in an humble and dutiful way his *Petition de Droyt*, or Petition of Right in the Exchequer, wherein the Subject may disclose his Grievance, and pray Remedy. And the Judges there are bound by their Oaths, to do him Right and Justice, and to give Judgement for him if they see legal Cause. And thereupon the Court is enabled, and obliged, by Duty of common Justice, to award a Writ to the Treasurer and Chamberlains of the Receipt of the Exchequer to make good payment of what Moneys are Adjudged to the Petitioner. This matter shall be placed beyond all possibility of scruple by producing (among many others ready at hand) one famous President of this kind, and that is the Case of Sr. *Thomas Wroche*, Adjudged in *Trinity* Term in 15 of Q. *Elizabeth*, and Reported in *Plowdens* Commentaries, *fol.* 454. where the Case was this.

King *Henry* the Eighth appoints *Wroche* Gentleman Usher of the Privy Chamber to his Son Prince *Edward*, and then by his Letters Patents bearing date the thirty eighth year of his Reign, in consideration of the same Service, grants to *Wroche* an annual Rent of 20 l. during his natural Life; *Wroche* officiates in the place, *Henry* the eighth dyes, *Edward* the sixth dyes, Q. *Mary* dyes, and in the fourteenth year of Q. *Elizabeth*, *Wroche* (having hitherto received no part of his Annuity) exhibits his Petition of Right in the Court of Exchequer, and discloseth his whole Case, And the Queens Atturney demurrs. And there the Barons (after mature deliberation had among themselves, as also by the Advice of all the Judges of the Common Pleas, the Queens Serjeants at Law, Her Attorney General, and Sollicitor) do unanimously Adjudge, That all the arrearages of the same Annuity from the said thirty eighth year of *Henry* the eighth, to the fourteenth of *Elizabeth*, ought by Law to be paid to *Wroche*, and do there award a Writ in the Queens Name to the Treasurer and Chamberlains of the Receipt of the Exchequer, commanding them to make good payment to him accordingly out of the Queens Treasure remaining then in their Hands. And farther, to continue payment of the same Annuity to *Wroche* during his Life. And it is expressed in the Report of the same Case; That afterwards payment was made to him according to the command of the said Writ.

So

So here is an Annuity granted by the King's Letters Patents, which had continued in arrear during the Reigns of no leſs than four ſeveral Princes of this Realm. And beſides the Service to Prince *Edward* (which was the conſideration of the ſame Annuity) was determin'd about twenty five years before, and yet the ſame Annuity Reſolved valid in Law by Two of the great Courts of Law at *Weſtminſter*, together with all the Queens Council at Law. And if *Wroche* (by poſſibility in nature) had ſurvived to this very day, yet the ſame Annuity by Law ought to have been paid to him. And it will be moſt manifeſt to any conſidering Man, that the Caſe of the Goldſmiths and their Creditors, is a far ſtronger Caſe than this of *Wroche*'s, in ſeveral moſt evident Circumſtances, ſome whereof have been diſcloſed and laid open in the preceding Diſcourſe.

So much then ſhall ſuffice for proof of the Validity of the ſaid Letters Patents and Debt, to the Goldſmiths and their Aſſigns for ever.

Secondly, As good a Power and Authority as ever, remains ſtill in the Goldſmiths to make legal and valid Aſſignments to their Creditors, though the year limited, in the ſaid Letters Patents for Aſſignments, be fully expired.

1. Becauſe the yearly ſumms, mentioned in the ſaid Letters Patents, are granted to the Goldſmiths, expreſly in Truſt for their Creditors: And only the Reſidue and Overplus of the ſaid yearly ſumms, after their Debts paid, is there appointed to remain to the proper Uſe and Benefit of the ſaid Goldſmiths; And therefore the Goldſmiths may at any time, until a final ſatisfaction received by their Creditors, make Aſſignments to them valid and good in Law.

2. The Letters Patents do ſay in the Affirmative, That the ſaid yearly ſumms are granted to the Goldſmiths in Truſt for ſuch Creditors, as within one year ſhall accept of Aſſignments, but yet ſay not in the Negative, That thoſe Creditors which do not accept of Aſſignments within that time, ſhall be for ever concluded from all Benefit of the ſaid Truſt. And therefore they are not fore-cloſed. Like the Statute of 37 of *Henry* the Eighth, Chap. 17. that Enacts in the Affirmative, That Lay perſons, being Doctors of the Civil Law, may be Chancellours, Officials, *&c.* in the Eccleſiaſtical Courts, but becauſe it is not there expreſſed in the Negative, that no other perſons ſhall be, It hath been for that Reaſon Adjudged, that a Batchelor of Law, or any other Lay perſon may be a Chancellour or Official, *&c.* *Croke*'s Rep. 8 *Car.* 1. *Walker* v. Sir *John Lamb.*

3. Though the Goldſmiths do Covenant with the King, that during the ſpace of one year from the Date of the Letters Patents, they will not Aſſign to any but Creditors, yet they do not Covenant that after that time they will not Aſſign to Creditors. And it would be abſurd enough that their Aſſignments after the day ſhould be good to Strangers, and yet void to Creditors.

4. It is moſt plain by the very poſitive and expreſs Letter of the ſaid Patent it ſelf, that Aſſignments after the year, ſhould be equally valid with thoſe made within the year: For there is an expreſs proviſion (*Fol.* 13.) That all Aſſignments to be made as well before, *as after the ſpace of one year* (ſaith the Patent) ſhall be Enrolled within thirty daies, *&c.* And if the Aſſignments after the year are void, to what end ſhould they be Enrolled? It is plain the Enrollment will never mend them.

So much touching the legal power yet remaining in the Goldſmiths to make Aſſignments.

Thirdly, That it is moſt adviſeable for the Creditors to accept of Aſſignments from the Goldſmiths.

1. Becauſe it is far more prudent for a man to be his own Truſtee, and Maſter and Poſſeſſour of that Security given to him by the Letters Patents (eſpecially being a Security of that

that ſtrength and force, as hath been ſufficiently proved) than to ſuffer it to continue in the Cuſtody and Managery of another perſon, though never ſo honeſt.

2. Becauſe Mankind is ſooner led by Example than Precept, or good Counſel, though never ſo ſeaſonable. It is not unworthy of Obſervation, That divers Learned Judges, and other great Lawyers, Church-men, Stateſmen, Merchants, Tradeſmen, highly concern'd in this Debt: And in fine, as ſagacious diſcreet and wary Perſons as this Nation affords, have already taken Aſſignments, and have found good compliance and ſatisfaction therein, being punctually paid their quarterly Intereſt at the Exciſe Office, according to the Patent. But if any Man ſhall go on to pleaſe himſelf with Conceit, and ſay I will keep my Bond, aud not deliver it up to the Goldſmiths, and ſo I ſhall have two ſtrings to my Bow; That man with all his Politicks and Craft, may miſtake to his irreparable dammage and loſs. And therefore he may do well to ruminate and adviſe upon theſe furt her Conſiderations, which he will ſay are not very pleaſant ones.

3. That the Goldſmiths can never be able to ſatisfie their Creditors, by any other waies or means than by making Aſſignments. For if the Eſtates of the moſt opulent and wealthy of them ſhould be ſold by Out-cry, what would be the Effect thereof? Why truly the products of ſuch ſale would not ſatisfie perhaps the tenth part of the Debt. And it would be like a Wrack at Sea of ſome rich *Eaſt-India* Ship, every body would ravage and catch at what he could, and ſome (which had moſt reaſon) perhaps get little or nothing. And again this Expedient would but diſable the Goldſmiths in point of ſolliciting and obtaining an Act of Parliament for thoſe which have taken Aſſignments from them already, as well as thoſe which hitherto have not. And it is well known that poor and indigent Sollicitors ſeldom ſpeed. And upon ſuch a Diſcharge of their Creditors, they will have the more freedom, leiſure and ability to accompliſh ſuch an Act as is generally deſired. To ſay nothing that the Debt diffuſed and diſtributed in Ten thouſand hands, will be rendred far more ſecure than if it remain in Ten hands.

4. Though the King hath obliged the Goldſmiths by their Covenant, not to diſpoſe of any part of the ſaid yearly Summ to any perſons, other than their real Creditors, during the ſpace of one year, yet the ſaid Goldſmiths are not at all reſtrained by the ſaid Letters Patents from diſpoſal thereof to any other perſons whatſoever, after the expiration of the ſaid year. And if any of the Goldſmiths now ſhould accordingly diſpoſe to Strangers for their private Lucre and Gain, Let all men that are concern'd in this Debt, conſider what advantage is like to accrue to the real Creditors by ſuch Diſpoſal.

5. The Goldſmiths are not ſo well enabled to pay Intereſt to their Creditors as formerly, becauſe when they contracted at firſt with their Creditors to pay full Intereſt, they did this upon ſuppoſition and proſpect of the continuance of His Majeſties accuſtomed Royal Bounty to them, the Current whereof hath been obſtructed ever ſince the Stop of the Exchequer, now almoſt ſeven years together: In all which time they have been ſo far from receiving any thing of that nature, that they have indeed paid Intereſt faſter to their Creditors, than they have received it from the Crown. And, which is more, have loſt their Trades, and many of their juſt Debts, and yet have kept Shops and Servants as they did before, to their no ſmall Charge, the Creditors ſtill requiring the ſame Intereſt as formerly, which ſeems very ſevere.

And Laſtly, (which perhaps Wiſe men will think not unworthy of a ſeaſonable Remark) The Goldſmiths are Mortal, and obnoxious to the ſudden ſummons of Death and Fate, as other men are. And ſome of their Heirs are under Age; And all men know that Infants cannot make Deeds and Aſſignments valid and good in Law; neither are their Perſons or Eſtates by Law liable to any Executions for Debt. So then it will be too late for the Creditors to deſire Aſſignments. Then for their Executors (if they can without breach of Civility deſire any conſiderable Friend to undertake that Office) they ſhall be ſuppoſed perſons of great Ability, and the chaſteſt Integrity,

tegrity, nay chosen in a Common Council of all the Creditors for that purpose Assembled; yet we find by daily experience, that the best and honestest Friends of Dead Men, are oftentimes willing, and do actually ease and infranchise themselves from burdensome, clamorous, and unprofitable Trusts and Offices, and truly these of the Goldsmiths are not like to be very pleasant ones. And then what is the next thing to be done? Why truly, twenty to one, those Gentlemen of Ability and Integrity, will be contented to renounce and let fall their Executorships, and leave them to be taken up by some meaner persons that have courage enough to charge bravely through a whole Body of cursing and murmuring Creditors, or perhaps such whose Faces they shall not see once in a year. And these are the persons shall be the only gainers. And so possibly enough, the Creditors after a long, anxious, vain and chargeable Fatigue and Circuits of Suits and Sollicitations, and having exposed themselves to all the Arts and Devices which the worst of those that appertain to the Law can invent, shall sit down at length, and bewail their Condition and Opportunities wilfully neglected, and when it is too late, wish they had accepted Assignments in the life-time of the Goldsmiths.

Now if it be Objected, That it will be inconvenient for the Creditors of small and petty Summs of Money to take Assignments from the Goldsmiths, by reason of the Charge and Trouble that may happen to them in striking Talleys upon the Excise for their Interest; That Inconvenience and Charge may by this following Method, be with great ease remedyed. In the first place, Let the Goldsmith by the appointment and consent of ten, twenty, thirty, fifty, or as many of the Creditors as please, Assign to the Chamberlain of *London*, for the time being (whose Office never dies) or to any of the Corporations or Companies of *London*, or to some other private Friend, whom they conceive worthy of such a Trust: And then let the said common Trustee make a Declaration of the several Trusts by Deed. And striken Talley upon the Excise for all the particular Summs in Gross, and so upon Receipt thereof distribute the quarterly Interest to every individual person according to his proportion and share, which will avoid the mischief of an unknown or fraudulent Executor also.

So that then upon Consideration of the whole and entire matter of this Case; *First*, The Great Seal being proved beyond all scruple, to be a Sacred and inviolable Security for this Debt in perpetuity, as well to the Creditors as to the Goldsmiths. *Secondly*, It being also made evident, That a good power resides still in the Goldsmiths, to make valid Assignments in Law to their Creditors, though the year mentioned in the said Letters Patents for Assignments be fully expired. *Thirdly*, It being demonstrated that the Delay of taking farther Assignments from the Goldsmiths, may prove full of Danger and Mischief. All Mankind must thereupon necessarily conclude, That the only sure Method and Expedient to obviate and prevent all the said Mischiefs and Dangers, and to render the Debt impregnable and secure to the Creditors, is for the Creditors to lose no more time, but to proceed to take farther speedy, and seasonable Assignments from the Goldsmiths.

FINIS.